

US. Department of Labor

Office of Administrative Law Judges
2600 Mt. Ephraim Avenue
Camden, New Jersey 08104

Date Issued: August 17, 1998

case No.: 97-JIP-17

In the Matter of:

ANISHINABE COUNCIL OF JOB DEVELOPERS
complainant

v.

U.S. DEPARTMENT OF LABOR,
Respondent
andAMERICAN INDIAN OPPORTUNITIES
INDUSTRIALIZATION CENTER,

Party in interest

Appearances:Frank J. Bobbitt, Esq.
Roseville, Minnesota
For the ComplainantStephen R. Jones, Esq.
Washington, D.C.
For the RespondentLarry B. Leventhal, Esq.
Minneapolis, Minnesota
For Party in Interest (AIOIC)Before: PAUL H TEITLER
Administrative Law Judge

DECISION AND ORDER

This case arises under the Job Training Partnership Act, 29 U.S.C. § 1501 *et seq.* (hereinafter "JTPA") and the regulations contained at 20 C.F.R. §626 *et seq.* Complainant Tennessee Opportunity Program, Inc. (TOPS) requested administrative review under 20

C.F.R. §636.10 of the decision of the grant officer to disapprove their application for a grant to provide job placement services and vocational/educational training and employment assistance services to Native Americans in Hennepin and Ramsey Counties in the state of Minnesota under Title IV, Section 401 of the JTPA, 29 U.S.C.A. §1671(1994), *et seq.*, and award the grant to another applicant, the American Indian Opportunities Industrialization Center, Alabama Department of Economic and Community Affairs. A formal hearing was held in St. Paul, Minnesota on May 12, 1998. The parties filed post-hearing briefs.

Findings of Fact and Conclusions of Law'

A. Background

Section 401, 29 U.S.C.A. §1671 of the JTPA states:

The Congress finds that --

- (1) serious unemployment and economic disadvantages exist among members of Indian, Alaskan Native and Hawaiian Native Communities;
- (2) there is a compelling need for the establishment of comprehensive training and employment programs for members of those communities; and
- (3) such programs are essential to the reduction of economic disadvantages among individual members of those communities and to the advancement of economic and social development in the communities consistent with their goals and lifestyles.

29 U.S.C.A. §1671 (a). As stated above, Congress determined that this program should be administered by the Federal government versus administration by the individual states. This section requires that the Secretary of Labor

... shall after consultation with representatives of Indians and other Native Americans, prescribe such rules, regulations and performance standards pursuant to section 1516 of this title relating to Native American programs under this section as may be required to meet the special circumstances under which such programs operate.

29 U.S.C.A. §1671(h)(1). Competition for grants is conducted every two years; except that if a recipient of such grant has performed satisfactorily under the terms of the existing grant agreement, the Secretary may waive the requirement for such competition on receipt from the recipient of a satisfactory 2-year program plan for the succeeding 2-year grant period

To implement this program, the Secretary of Labor promulgated the regulations located at

¹ Citations to the record will be abbreviated as follows: ACJD EX - - Complainants Exhibit; DOL EX - - Respondent's Exhibit; AIOIC Party In Interest exhibits EX; TX - - Page - Hearing Transcript.

20 C.F.R. Part 632. The procedures for awarding funding grants under Section 401 of the JTPA are found at 20 C.F.R. §§632.10 through .125. Under these regulations, the Department of Labor is required to and did publish the criteria for the selection of JTPA grantees for the years 1997, 1998 in the *Federal Register*. See Notice of Final Designation Procedures for Grantees (NFDG), 61 FR 48, 170-74. These criteria are based upon the eligibility and application requirements promulgated by the U.S. Department of Labor (DOL) at 20 C.F.R §632.10 Eligibility requirements for designation as a Native American grantee and §632.11 Designation of Native American Grantees *id at f-1*.

20 C.F.R § 632.11 (a) When designations are required and the potential grantee is not under a Master Plan Agreement, an applicant for designation as a Native American Grantee shall submit a notice of intent to apply for funds. Such notices of intent...to apply shall be submitted on a Standard Form 424 as a preapplication for Federal assistance. For applications not under an active Master Plan agreement or the Master Plan agreement is due to expire during the year of designation, the following information shall be included in the notice of intent: The information is listed in 20 C.F.R § 632.11 (1) through (14). 20 C.F.R. §632.11(a)(2) states that applicants must provide:

(a) description of the geographic area or areas which the applicant proposes to serve together with the Indian and Native American population in such areas. The description must include a list of States (if more than one), in alphabetical order, and under each State, a list of counties in alphabetical order, followed by a list of tribes, bands or groups (if any) in alphabetical order. If the applicant was a Native American grantee for the period prior to the one which is being applied for, the applicant must also list any counties and tribes, bands or groups which are being applied for.

The parties essentially agree that the DOL issued a Solicitation for Grant Application under JTPA on September 12, 1996. In accordance with this solicitation, the Anishinabe Counsel provided a timely Advance Notice of Intent to apply for the JTPA grant for the program years of 1997, 1998. On March 1, 1997 James Deluca, JTPA Grant Officer, conditionally designated the Anishinabe Counsel to receive JTPA grant funds for Hennepin County during program years 1997, 1998. The other applicant, American Indian Opportunities Industrialization Center (AIOIC), was notified of its non-designation and requested reconsideration. On April 29, 1997 Mr. Deluca reversed his initial decision and designated AIOIC to receive the grant. The Anishinabe Counsel was notified on the same day by the Grant Officer that it was non-designated based upon a failure to adequately identify the service area it intended to serve on the "Final Notice of Intent, form 424".

Testimony of James Deluca

Mr. Deluca testified that he oversees grant programs which include Native Americans, Migrant Seasonal Farm Workers, and Senior Citizens employment programs. He oversees the administration of existing grants. He also selects the grantees for the 401 programs. He

conditionally selected Anishinabe Council of Job Developers (ACJD) as grantee for the 401 program for Hennepin County, Minnesota. There after he selected American Indian Opportunities Industrialization Center (AIOIC) as the actual grant recipient. TX 3313. Mr. Deluca stated procedurally that the Department of Labor does a solicitation for 401 grant applications, and panels are selected because of the volume to assist him in the selection. The panels consist of present or former federal employees with specific knowledge of Native American Programs. The panel meets in one room working together to review the applications. When they complete their work the panel chairperson does a summary report of the panel's work comparing one organization to another. Mr. Deluca's staff person Ms. Phyllis Mahan then reviews the panel information and he reviews her work TX 35-37. He testified that the panel score has great weight with him, however it is advisory to him. If he disagrees, he documents his disagreement. He determines if the potential applicant is eligible, after they have been approved by the Division of Indian and Native American Programs, DINAP. DINAP does a -- hierarchy review to see if there is competition in any particular area. TX 37-38. The solicitation for a grant application for the years 97,98 was published on September 12, 1996. It is a two part process, the Advance Notice of Intent which is published in the DOL solicitation is a voluntary process to indicate the areas of competition to the applicants. He identified "Tab G at G-14" as a form used by new applicants to indicate the areas that they are applying for. Anishinabe Council filled out this form and it was submitted with their Advance Notice of Intent to Apply. This Advance Notice indicated the service area as "Ramsey and Hennepin Counties". TX 41. Their Advance Notice was submitted on January 1, 1997. Mr. Deluca read 20 CFR §632.11(A)(2) in to the record. It states in part that it must include the geographic area or areas which the applicant proposes to serve together with the Indian and Native American population in such areas. The applicant must list the counties in alphabetical order followed by a list of tribes, bands or groups in alphabetical order. He said the statutory language was there because they needed to sort out funding according to the census reports. He indicated that DOL Exhibit "F-4 was the standard 424 form, Final Notice of Intent", submitted by Anishinabe Council and it stated the service area was "Minneapolis/St. Paul Metropolitan area". This service area was not consistent with the defined service area in the solicitation. It is incumbent on the applicant to make clear what service area they are applying for. He said that he could not contact the applicant to advise them of their error because "it went to the base application", and that was not an area of information that could be clarified. TX 45. He then reviewed DOL Exhibit Tab G, G-10 which was the Notice of Intent for American Indian OIC and it correctly identified Hennepin County, Minnesota as tk service area. He said that Anishinabe Council's advance notice stated Hennepin and Ramsey Counties as the service area. The panel was asked to select the grantee for Hennepin County, because there was no potential for significant superiority in Ramsey County. When the panel reviewed the applications, they rated the Anishinabe proposal better than the American Indian OIC. TX 47. He said that he reviewed the panel's work but did not review the 424, and was unaware of the conflict and he conditionally designated Anishinabe Council. TX 48. He reviewed DOL Exhibit Tab C, C-I which was the letter conditionally designating Anishinabe Council until it was determined that they had the capability to administer the grant money. DOL Exhibit Tab C, C-5 was his letter advising American Indian OIC Of their non-designation. American Indian OIC then asked for reconsideration. The review of the

American Indian OIC's request for reconsideration indicated that there was a problem on the Anishinabe Council's 424. TX 49 He then wrote a letter, DOL Exhibit Tab B, B-10, to the Anishinabe Council that upon review of the Petition of American Indian he determined that there was an error in Anishinabe's 424, and that their conditional designation was withdrawn. Anishinabe Council thereafter file the instant appeal. He was asked why the service area in question could not be partitioned between American Indian and Anishinabe. He stated that this would require the DINAP office to make a decision on the allocation of tiding or split their allocation instrument, and this action would require the agreement of all the parties in the area. He reviewed DOL Tab D, D-4 the panel score for Anishinabe Council which was 783. American Indian OIC score was 60.6, DOL Exhibit TAB D, D-4. He said his selection of American Indian was based upon the fact that their score was technically acceptable, and they were the only qualified applicant for Hennepin County, Minnesota. He also said that there were some comments made by the panel, that they knew this grantee to be better than the proposal that they submitted, but they just happened to be very weak in their submittal. 'IX 53.

Mr. Deluca was cross-examined by American Indian Center counsel. TX 54. He testified that it was important to have a specific specification of a service area because there was not sufficient money to handle all the programs. They are only able to service ten percent of the needy population, and that there is a formula to the established service area based upon the Congress' appropriation. TX 54 He said that the panel did not read the application in accordance with a specific service area. They are not asked to look at the service area. TX 55. He stated that American Indian was the grantee in Hennepin County and Minneapolis American Indian Center was the grantee in Ramsey County. TX 56. He testified that the Anishinabe Council did not designate a geographic area consistent with 20 CFR §632.11, because it was not identified by state, county, by tribe, by reservation. TX 57. He said, there was according to the hierarchy task force no potential for significant superiority for Ramsey County, therefore there was no competition for Ramsey County. He concluded that if Anishinabe had designated Hennepin County the grant would have been correct. TX 60. He said that DOL Exhibit Tab F, F-3 which contains the application, generally speaks both of Minneapolis and St. Paul in several places. He agreed that the Minneapolis St. Paul area consists of eleven counties, however it was an incorrect service area. TX 62.

Mr. Deluca was cross-examined by Anishinabe counsel. TX 63. He agreed that the purpose of the JTPA was to provide Native American employment and training services, and to select the best organization within procedural constraints. TX 63. He said that there were situations where because of geography it makes more sense for one organization to provide services to a county than another organization who had applied for the grant. He relied on the program office for input in his final determination. TX 66. He also stated that it was possible to have more than one organization servicing a service area, since it is not infrequent for some of those organizations to provide services to other people who walk through their doors. They are not precluded from doing that. The limiting factor is money, since it is being received to service a specific area. TX 66-69. He stated that an error on the 424 is not unique, it is unique that this error went this far. There were two reviews, the hierarchy review and the panel review. Then

Ms. Mayan reviewed the panel's work and then his final selection. These reviews had the understanding that they were to select the best organization to service Hennepin County. Mr. Deluca stated that the hierarchy review incorrectly used their knowledge of the advance notice of intent and applied it to the final notice Of intent, and that was absolutely incorrect. TX 69-73 Mr. Deluca said that the advance notice of intent and the final notice are not the same form. The CFR regulations talk about counties or states, and if you read the regulations there would be no confusion on what is meant by service delivery area in the 424 form. TX 74, 75. He stated that new applicants almost always are conditionally designated until they get more information on them administratively. They require Comprehension Annual Plan, CAP, attestation that they could handle the funds. He wanted their master plan and the CAP. He testified that the minute he looked at the 424 "I knew that there was a problem". The person responsible for doing the funding formula said that he could get at that, provide grant funding, using the "Metropolitan Statistical Area". TX 81-83. Mr. Deluca said that he saw no other alternatives, it was either designate or non-designate. There were other alternatives and they would be unusual, splitting a service area, but it is their intent to keep the service areas as large as we possibly can. The smaller the service area the harder it is to administer, and the administration costs are limited to 20% of costs. TX 83-84. He stated again that the Anishinabe application had a basic fault, they applied incorrectly, and it should have been rejected immediately, but he apologized that it had not been done. TX 83. He said that this technical error gave him no choice other than to reject the proposal. He stated that although Anishinabe Council received a higher rating than the incumbent, their application was not sent to us in a format that could be processed. TX 88, 89. Thereafter DOL Exhibit Number four, a SF-424, was admitted into the record. Mr. Deluca was asked about item 12 which required listing "only the largest political entities affected, e.g. states, counties, cities", and he stated that Metropolitan area is not a political entity. TX 93. Mr Deluca stated that an after the fact specification of a service area following the initial review would not cure the original ineligibility. The Anishinabe service area should have been deemed ineligible and not open for clarification at that point. TX 95. He concluded that it was his decision not to grant Anishinabe Council's application because it was faulty. Initially Anishinabe Council was ineligible and should not have been considered. When asked by the Court, Mr. Deluca stated that if the Anishinabe application was the only application that he had before him he would have had the option of granting it. TX 96, 97.

Testimony of Kathryn Lightfoot

Ms. Lightfoot testified that after a successful 32 year career at Honeywell as Director of Human Resources for Minneapolis Operations, she went into business for herself. Two years ago she joined American Indian Opportunities Industrialization Center (AIOIC) as its Executive Director. American Indian was a training vehicle to provide work readiness, preparation, placement, and retention services for Native Americans. In 1979, Clyde Bellecourt and Dr. Leon H. Sullivan founded American Indian OIC. American Indian applied for Federal funding in 1983 under the CETA program, which became the JTPA program. Their campus is located in Minneapolis in the Phillips Neighborhood wherein there is a large population of poor American Indian people. The facility has 28,000 square feet of a renovated building which contains day

care centers, a staff of 38, and has a \$3.5 million budget. American Indian is a service provider to Minnesota in their welfare to work initiatives. Their JTPA Grant is for a job training program operating in Hennepin County, Minnesota. She said that there were other JTPA grantees, the Minneapolis American Indian Center which services the balance of the State of Minnesota, Ramsey, Anoka, Carver, Chisago, Dakota, Isanti, Scott, Sherburne, Washington, and Wright County, Minnesota. TX 100-105. AIOIC has served Hennepin County since 1977, and is the Grantee through mid 1999. She said that it was her belief that American Indian was effectively serving their community, had effectively served 2475 clients last year and a total number of clients in excess of 10,000 at an approximate cost of \$1,500.00 per person. She said that she was now aware, after sitting in the courtroom, that AIOIC's JTPA grant application was ranked significantly lower than Anishinabe Council.

Testimony of Clyde Bellecourt

Mr. Bellecourt testified that he was from the Anishinabe Nation in White Earth, member of the Green Clan, and resided in Minneapolis. He is a founder and National Director of the American Indian Movement which was founded in Minneapolis in July 1968. At that time American Indians were at the bottom rung of the ladder in all areas of poverty, education, health, welfare, housing, and employment. The movement was to uphold the trust relationship with the Federal Government through treaties. He is a founder and Vice-President of the Legal Rights Center which has served over 30,000 indigenous clients over the past 30 years. He is one of the founders and has served as President of the Hardy Earth Survival School that has an Indian based curriculum, and has demonstrated a successful graduate program. He also is a founder of the Little Earth United tribes, an urban Indian Housing program, and a founder and President of the AIM Peacemaker Center, an alternative to gang culture and violence. The American Indian Opportunities Industrialization Center is an Indian controlled consortium to develop an affirmative Action Programs for American Indians. At present, American Indian OIC has a day care program, job training program for Indian day care, school to work program, a program to identify potential drop outs, bringing them back to their school with a culture-based program which enables them to graduate. It is a very successful program. They have a diabetes program because 50% of Minnesota Indians have the disease and they need to change their eating habits. They also have a work training program for Native Americans, and pick up the difference in actual wages while they are training. TX 119. He is currently President of the Board of American Indian OIC. The Board is controlled by Indian people, and 75% of the membership is Native American. They have representatives from the business community, a student representative, and alumni on their Board. They continue to serve Hennepin County. TX 119-123. He said that they service people from Hennepin County and refer non-residents to groups servicing their areas. TX 124. He indicated that he was surprised that the panel had ranked Anishinabe Council superior to American Indian because he felt that American Indian provided superior programing to any other training program in Minnesota. TX 125.

Testimony of Dawn Marie Paro

Ms. Paro testified that she was the JTPA Program Director for American Indian OIC. She has been employed there since December 1985, becoming Director in 1991. She said that American Indian, the Grantee, serves Indian people in Hennepin County. They refer non-residents of Hennepin County to the appropriate service area Grantee. They do not service Ramsey County. She submitted the forms "Advance Notice of Intent" and the "Final Notice of Intent" to the Department of Labor. These forms were signed by Clyde Bellecourt, and the service area was Hennepin County, Minnesota for the years 1997-1999.

Testimony of Wilma Grace Mason

Ms. Mason testified on behalf of the Petitioner, Anishinabe Council of Job Developers. She is one of the founders and the incorporator of Anishinabe Council, which has been in business since 1981 as an informal group, and 1988 as an incorporated group. She testified that she was from the Red Lake Band of Chippewa Indians about 250 miles north of St. Paul, Minnesota TX 133. She has a Bachelor's Degree from Oxford College in Minneapolis, and is currently taking courses toward a Master's Degree. She was born and raised on a reservation, and belongs to the Eagle Clan of her band. Her background includes being a single parent, growing up on a reservation in poverty. She has worked on programs designed for the most needy people, the hardest to employ, the Indian population in Hennepin County. She was appointed by the Governor to serve on the Minnesota Small Business Administration. She was a Civil Rights Commissioner for the City of Minneapolis for eleven years. In 1981, she was part of an informal group of Indian Job Placement Counselors throughout the metropolitan area working with various tribal entities doing job development. She also did job placement and retention studies in construction and building trades. She has been involved with the Minnesota American Indian Chamber of Commerce, the American Indian Veterans Organization, the Bureau of Indian Affairs higher education committee, a Guardian ad litem. Her agency currently has a performance-based contract with the City of Minneapolis, and has a contract to place Indian People who are residents of the Phillips Neighborhood. She worked with the Mayor of Minneapolis to provide job placement, job training. 'IX 130439. Anishinabe Council has placed about 180 people per year with a retention rate that averages between 85 to 100 percent. The name Anishinabe means Chippewa, the people. She was given a map of the Twin Cities Metropolitan Area. She indicated that Ramsey and Hennepin Counties are contiguous and separated by some land and some water. TX 145. She said that 85% of Anishinabe clients live within the City of Minneapolis which is a part of Hennepin County. They take clients from Ramsey County since it is their feeling that there is no boundary for the poor. The City of Minneapolis has about 12,335 American Indians. She testified that they included the whole Metropolitan area in their Mission Statement because the poor people live here. Her organization specializes in job placement, with networking between tribes and community organizations. They have been successful in job placements where ever needed. They do not refer people for job placement because it is their feeling that they are the best resource at job placement. They get job placement referrals from the Minnesota American Indian Resource

Center, North-Minneapolis American Indian Services. Terry Residence. American Indian OIC, Minneapolis Neighborhood Revitalization Program, the Urban League. TX 150. Anishinabe's predominant job placement efforts are focused in the Hennepin and Ramsey County areas, because that is where the poor people live. She testified that she learned about the JTPA program in 1990. She had received job placement funding from Hennepin County in 1995. She said that she became interested in the JTPA program because they were currently placing people in jobs. They had performance based contracts with the City of Minneapolis and had a network of prospective employers. The JTPA funding for the 1997, 1998 grant years would have fit in with their operations. She got a copy of the Federal Register relative to the actual JTPA solicitation process for the grant in question. She knew that it was for Hennepin and Ramsey County, and she knew that funds were being given to American Indian OIC and the Minneapolis American Indian Center. She testified that the geographical service areas were clear in the Advance Notice, but the SF 424 was confusing and she thought maybe it was a "trick question to really find out if you really know who your're dealing with...I just put in Minneapolis/St. Paul. But it is Hennepin County and Ramsey." TX 159.

She testified that she was in error when she checked as type of applicants item #1 "Indian tribe, band or group". TX 161. She testified that she was confused when she filled out the form 424 number 12 on which she wrote "Minneapolis/St. Paul". She was given and had the instructions for the Standard Form 424, DOL Exhibit 03. When he answered Number 12, areas affected by project, cities, counties, states. She said that she was not thinking of the political boundaries because there is no wall between Minneapolis/St. Paul or Anoka County or for that matter Hennepin County. TX 162-166. She requested \$181,000.00 dollars to expand her services and went with a request for a third of the money based upon the allocation figures coming into the state. She did not ask for the whole grant because she knew that there were other agencies providing training. She received notification, a pre-conditional letter, March 1, that they had been designated for Hennepin County, which was for over \$500,000.00. They did not ask for Ramsey County because there was another agency that was there a long time and appeared to be doing the job. She received the non-designation letter in April 1997. TX 167-169. The reason for the non-designation was because their answer on Form 424, number 12, listed the "Minneapolis/St. Paul Metro Area". She called Mr. Deluca, and felt that the rationale he offered was unfair, to be non-designated by a small technicality, that the SDA, service delivery area, was not right. She asked for reconsideration, and said that Anishinabe is continuing with a small JTPA and other projects. TX 171-174. She was cross-examined by American Indian counsel. She testified that their budget is about \$305,000.00 and they placed approximately 180 individuals in employment. Her understanding of the Twin Cities Metropolitan Area included several counties. She said her intention was to use the JTPA grant money to provide services to Ramsey and Hennepin Counties. She also said that she was in error when she identified herself as an Indian tribe. TX 180. She was asked if she was aware that the regulations provided an absolute preference to tribes in the competitive process. She said that when she looked at that she thought that we were an Indian Group. She was not aware of the preference. Anishinabe is a non-profit corporation that provided services in the urban areas. Her narrative stated that Anishinabe wished to expand direct services in job training and placement in the Minneapolis

and St. Paul area for a minimum of 75 American Indians through local employment contracts. TX 187.188. She stated again that she was confused on number 12, and she answered by the cities most affected by the project, which she understood were within Hennepin and Ramsey Counties. TX 190. Ms. Mason was cross-examined by counsel for the Grant Officer. She stated that she did not seek clarification relative to the service area. TX 192. She had a copy of 20 CFR §632 when she prepared her application, and received the JTPA law book in April 1997. She stated she received the advance notice of intent with all the directions, and this was the first time she applied for a JTPA grant. She could not have known that something was not right on the application. TX 194. Upon re-direct examination, she concluded her testimony that her advance notice of intent properly identified Hennepin and Ramsey Counties. We have always worked in Hennepin County and it's in Minneapolis. TX 196-197.

Testimony of Richard Mason

Mr. Mason testified that Ms. Mason was his sister, and he is the business manager of the Anishinabe Council of Job Developers, and his supervisors are the Board of Directors. He is a voting member of the Red Lake Band of Chippewa. He has a Political Science Degree and received a Masters in Business Administration from St. Thomas University, Minnesota. He also is the administrator of the Native Temps Projects of the Anishinabe Council, and has been since 1993. They provide job placement for their clients in the Minnesota areas several counties. TX 199-201. In 1996, Ms. Mason informed him that she was seeking a grant under JTPA and his part was to provide her numbers for the Native American Temps Project, which would have received about 65% of the funds. TX 202. His understanding of the DOL grant solicitation was that its base was within the City of Minneapolis. They requested Hennepin and Ramsey counties in the Advance Notice of Intent. He did not sign the Final Notice of Intent and his participation was limited to providing suggestions and information. TX 204. They were going to expand the number of people they could service and were restricted by that grant to stay within the confines of Hennepin County. In April 29, 1997, his sister informed him that her request for a JTPA grant had been denied. He said that there are a large population of Indian People in Minneapolis and St. Paul but it was their intention to use this grant for Hennepin County. He stated he was not familiar with 20 CFR Part 632 or the 401 language, other than it is for a federal grant. He did not sign or submit any of the paperwork to the Department of Labor.

Testimony of Francis Gloria Fairbanks

Ms. Fairbanks testified that she has been the Director of the Minneapolis American Indian Center since 1984. The budget is about 3 million dollars. She started as an intake worker for the SETA program, became supervisor, it serviced Hennepin and Ramsey Counties and 70 other counties. In 1994 they split moneys with the AIOIC. The Minneapolis American Indian Center is a social service agency that is for the Indian Community, providing education, senior programs, JTPA, child welfare programs, and family help programs. They have a youth program, Golden Eagle Program that services children five to eighteen years of age. The JTPA grant program is a portion of the services offered by the center. Its service area does not include

Hennepin County which is serviced by AIOIC. Their service area includes Ramsey County, TX 213-216. They submitted an advance notice of intent to continue with the JTPA program for the years 1997-t 999, . The Minneapolis American Indian Center has been notified by DOL that it's JTPA grant was continued to 1999 for the 71 counties it applied for. They work with the American Indian Opportunities Industrialization Commission, AIOIC. They have referred people to AIOIC for JTPA orientation, and AIOIC refers people in Ramsey County to them. They also refer people who live in Hennepin County to AIOIC. Her opinion is that AIOIC does a real good job. She is bound to their service area, Ramsey County, and refers people who do not reside or work in their area to the agency servicing the other appropriate areas.

B. Standard of Review

The Department of Labor contends that the appropriate standard of review is contained in JTPA Section 401 Native American non-selection cases: The issue is whether the Grant Officer's decision and action were arbitrary and capricious, an abuse of discretion, or not in accordance with law. The cite County of Los Angeles Community and Senior Citizens Serv. v. DOL, 87 JTP 17 at 3-4 (Department of Labor June 29, 1988). Review is not de novo but limited to determining whether relevant factors were considered by the Grant Officer in making his decision and whether the ultimate decision reflects reasoned decision-making in accordance with the governing statutes rules and regulations, Id. at 4.

20 C.F.R § 636.1-11, § 636.10(h) provides that the Administrative Law Judge shall determine from the record whether there exists reliable and probative evidence to uphold the decision of the Grant Officer and shall, as appropriate, either affirm or remand the decision.

C. Findings of Fact and Conclusions of Law

American Indian Opportunities Industrialization Center (AIOIC) had been the Job training Partnership Act (JTPA) provider for Hennepin County, Minnesota since 1983. The Department of Labor (DOL) issued a solicitation for a grant application on September 12, 1996 for a Competition for Section 401 grants for Hennepin County, Minnesota. The solicitation notice stated that applicants must comply with the regulations governing the process and referenced 20 C.F.R. § 632. Anishinabe Council of Job Developers (ACJB), the Complainant

The DOL did not detect the discrepancy between the ACJB's, Advance Notice of Intent, and its Final Notice of Intent and the final notice of intent was processed as a formal application to serve Hennepin and Ramsey County. The criteria for the selection of the JTPA section 401 grantees for the program years 1997 and 1998 were published in the Federal Register See Notice of Final Designation Procedures for Grantees (NFDP) 61 FR 48,170-74(September 12, 1996) DOL- EX-01, Tab I. These criteria are based on the eligibility and application requirements set forth by the DOL at 20 C.F.R. §632 to implement JTPA Section 401. The requirements of 20 C.F.R. § 6321 l(a) address the information that applicants for Section 401 grants must provide to DOL. In Particular 20 C.F.R § 632.11 (a)(2) states that applicants must provide:

[a] description of the geographic area of areas which the applicant proposes to serve, together with the Indian and Native American population in such areas. The description must include a list of states (if more than one), in alphabetical order, and under each State a list of counties in alphabetical order, followed by a list of tribes, bands or groups (if any) in alphabetical order. If the applicant was a Native American grantee for the period prior to the one which is being applied for, the applicant must also list any counties or tribes, bands or groups which are being applied for.

The NFDP made repeated references to the requirements of 20 C.F.R. §632.11 Id at 1-1.1-3 and 1-4. Further the NFDP defines "Service Area" as the geographic area, described as states, counties, and/or reservation for which a designation is made." Id at 1-5.

The NFDP required applicants to submit Final Notices of Intent by January 1, 1997. DOL EX 01 at 1-3. Applicants were encouraged to, but not required to, submit Advance Notices of Intent. The purpose was to allow applicants to become aware of potential competition for Service Areas. This also would allow the resolution of possible conflicts before filing their Final Notices of Intent. The deadline for filing ANOI's was October 11, 1996. The NFDP specified that the information provided in the ANOI shall not be considered as final submission, as referenced 20 C.F.R. §632.11.

The DOL used a review panel to evaluate the applications in response to the September 12, 1996 notice. Under the NFDP, a non-incumbent such as ACJB could demonstrate in its application by verifiable information, that it was significantly superior overall to the incumbent DOL EX 01 at I-3. The application did not go forward in competition for Ramsey County because DOL "determined that there was no potential for significant superiority in Ramsey County". Mr. Deluca testified:

"The Final Notice went to the panel as Hennepin County, because there was no potential for significant superiority in Ramsey County". TX 47

The DOL review panel evaluated the applications of ACJD, and AIOIC, and the incumbent(AIOIC) as 60.6 which was "technically acceptable", Deluca TX 52,53, and ACJD as

78.3. Based upon the panel's scoring, Mr. Deluca, the Grant Officer, notified ACJD on March 1, 1997 that it had been conditionally designated to serve Hennepin County. DOL EX 01, C-1. On March 20, 1997 AIOIC filed for reconsideration of its non-designation.

Mr. Deluca testified:

We, it was. The minute I looked at the 424 I knew that there was a problem, because it was not—and on top of that, the person responsible for doing the funding formula when questioned said that he could not get at that with using the metropolitan statistical area....He had nowhere to go with it. He was assuming Hennepin County, and when told that it wasn't Hennepin County, it was the metropolitan statistical area, he could not work with it. I mean, there's no way he could determine what the funding would be. TX 82,83.

On April 29, 1997, the Grant Officer notified ACJD that their application had a defect which precluded designation as a 401 grantee. Mr. Deluca DOL EX 01, B-10 stated:

Your application did not clearly indicate the service area which you intended to serve. The Department has no other way of distributing the allocations except by formula which computes the figures by State, County, and/or reservation. The area you requested does not fit the definition of Service Area specified in our regulations as 20 C.F.R. § 6321 l(a)(2) Id.

On the same day the Grant Officer notified AIOIC that it had been designated as the grantee DOL EX 01 B-12. On May 20, 1997, ACJD petitioned for reconsideration and to be designated grantee for the fifth Congressional District, Hennepin County Area. DOL EX 01, B-2. ACJD stated that they had 'Misinterpreted the instructions on Form 424 when we read 'Areas affected'. We interpreted this to mean areas most affected by the project which to us is the inner cities where the concentration of Indians live. Wilma Grace Mason, a founder of ACJD, and the person writing the Final Notice of Intent, testified that her understanding of the Twin Cities Metropolitan Area included several counties and her intention was to use the JTPA to provide services for Ramsey, Hennepin Counties. TX 180

On June 6, 1997 the Grant officer affirmed his decision not to designate ACJD as Grantee for Hennepin County, On June 30, 1997 ACJD filed an appeal of the Grant Officer's decision and requested a hearing.

It is a fact that the ACJD designated Ramsey and Hennepin Counties in their Advance Notice of Intent. It is also also factual that the Final Notice of Intent, the 424 form listed the service area as the "Minneapolis/St. Paul Metropolitan Area". Ms. Mason also testified that she did not seek clarification relative to the service area, TX 192. She had a copy of 20 C.F.R. § 632 when she prepared her application. She received the JTPA law book in April 1997. Ms. Mason also testified that she was in error when identified herself as an Indian Tribe, in her

application, and that she was not aware that **this** designation would give her **preference** over a non-profit **corporation** applicant. TX 180-1 87. The **panel** obviously considered **her incorrect identification when it scored her application.**

Complainant's position is **that the Grand Officer's action was an unreasonable exercise of discretion.** He has wide authority to request **additional** information and clarification of applications following submission or following the panel review **process**. Respondent **stated that the** Grant Officer stated that he can and **does routinely** review **additional applicant** information **following** receipt of Final Notices of Intent TX 8 1. However Ms. **Mason testified** this was her **first JTPA grant application**, that she had the **necessary regulations, legal materials** and experience **to properly complete** the 424.

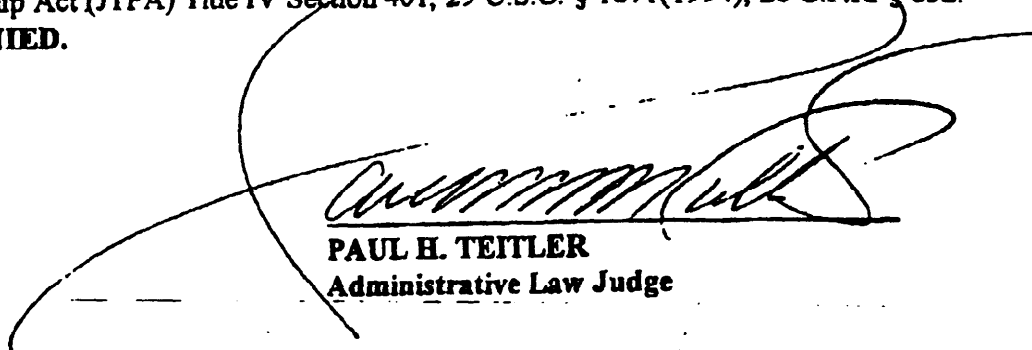
Mr. Deluca creditably testified that he **saw** no other alternatives, it was either **designate** or non-designate. **There** were other alternatives and they **would be unusual**, such as **splitting a service area**. It was **DOL's** intent to **keep** the service areas as **large** as possible because **the smaller the service are the harder it was to administer.** The **administration costs are limited to 20%** of the grant. The smaller the **pot**, the more **difficult** it is **to get staff, keep staff and get office space to provide services.** That is **the reason that DOL has preference for larger organizations, as a rule.** **There was nothing to coordinate with Anishinabe Counsel prior to a non-designation.** Their basic fault was that they **applied incorrectly, and to keep the process honest he had to be consistent TX 84,85.** He said that he had no choice to cure this technical error, and that was his decision. TX 86.

I find creditable Mr. Deluca's statements that the application of Anishinabe Council could not been funded as written because it did not meet with required designation of the geographical area to be served. This was a threshold requirement. The grantee AIOIC did not consent to a partitioning of the service area. I conclude that **Mr. Deluca acted reasonably, he was under no obligation to allow Anishinabe to re-submit or correct their application. Allowing a correction would have created future fairness problems.** His action **not to split the service area was in the best interest of the Department of labor and was based, in part, on administration cost savings**

Clearly Mr. Deluca's action was not an abuse of discretion. The complainant's Final Notice of Intent did not meet the threshold requirements of correctly naming a service area, that was designated to receive JTPA funding. There was another qualified applicant and it was not unreasonable to award the Grant to American Indian Opportunities Industrialization center

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The Application of Anishinabe Council of Job Developers, Inc., to be designated as the funding grantee for the years 1997, 1998 for Hennepin County, Minnesota pursuant to the Job Training Partnership Act (JTPA) Title IV Section 401, 29 U.S.C. § 1671(1994), 20 C.F.R. § 632. is **HEREBY DENIED.**



PAUL H. TEITLER
Administrative Law Judge